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Paper No.11

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MAY 26 2004

In re Application of
David C. Hamilton
Application No. 09/851,819
Filed: May 9, 2001
Attorney Docket No. GAC-1972 DIV

OFFICE OF PETITIONS
ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed April 22, 2004, to revive the above-identified application. In view of the allegation in the petition of the timely filing of a reply and the evidence submitted in support thereof, the petition is more properly a petition under 37 CFR 1.181 requesting withdrawal of the holding of abandonment in the above-identified application and has been so treated.

The petition to withdraw the holding of abandonment is **GRANTED**.

The above-identified application was held abandoned for failure to reply in a timely manner to the non-final Office action mailed January 24, 2003, which set a shortened statutory period for reply of three (3) months. A two (2) month extension of time was obtained and received by the USPTO on June 24, 2003.

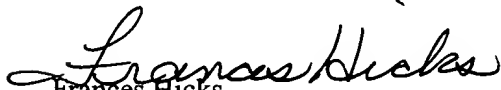
Petitioner states that the reply was in fact timely filed. To support this assertion, petitioner has submitted a copy of the return postcard which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on June 24, 2003 of 1. Certificate of Mailing (1 page); 2. Extension of Time Request (1 page); 3. Amendment (8 pages); 4. Power of Attorney (1 page); 5. Revocation of Power of Attorney (1 page). Additionally, petitioner has supplied a copy of the previously mailed correspondence.

Although the extension of time was received, the reply and the power of attorney acknowledged as having been received in the USPTO on June 24, 2003 are not of record in the application file and cannot be located. However, MPEP 503 states that "A post card receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the reply was timely received in the USPTO but was apparently lost after receipt thereof.

A petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 does not require a fee. Therefore, the petition fee of \$1,330.00 is being credited to petitioner's Deposit Account No. 04-0780.

The Office sincerely apologizes for the inconvenience caused petitioner in this matter. Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 306-5685.

The application file is being forwarded to Technology Center AU 3732.


Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy